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IN THE

Supreme Court of the United States

LUCY VIRGILIO, Personal Representative of Lawrence Virgilio, GERALDINE HALDERMAN, Personal Representative of Lt. David Halderman, EILEEN TALLON, Personal Representative of Sean Patrick Tallon, GERGARD J. PRIOR, Personal Representative of Kevin M. Prior, CATHERINE REGENHARD, Personal Representative of Christian Regenhard, MAUREEN L. DEWAN-GILLIGAN, Personal Representative of Gerard P. Dewan, JAMES BOYLE, Personal Representative of Michael Boyle, EDWARD SWEENEY, Personal Representative of Brian Sweeney,

(*caption continued on inside front cover*)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM A. REPPY, JR.
CHARLES L.B. LOWNDES
EMERITUS PROFESSOR OF LAW
DUKE UNIVERSITY
SCHOOL OF LAW
Durham, North Carolina 27708

WILLIAM VAN ALSTYNE
LEE PROFESSOR OF LAW
MARSHALL-WYTHE
SCHOOL OF LAW
Williamsburg, Virginia 23187

ERIC M. LIEBERMAN
Counsel of Record
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN
111 Broadway, 11th Floor
New York, New York 10006
(212) 254-1111

RICHARD SALEM
SALEM LAW GROUP
101 East Kennedy Boulevard
Tampa, Florida 33602
(813) 224-9000

Attorneys for Petitioner

GERALD JEAN-BAPTISTE, Co-Personal Representative of Gerard Jean Baptiste, Jr., ALEXANDER SANTORA, Personal Representative of Christopher Santora, MAUREEN SANTORA, Personal Representative of Christopher Santora, RAFFAELA CRISCI, Personal Representative of John A. Crisci and PATRICIA DEANGELIS, Personal Representative of Thomas P. DeAngelis,

Petitioners,

—against—

CITY OF NEW YORK and MOTOROLA, INC.,

Respondents.

QUESTIONS PRESENTED FOR REVIEW

Congress created an exclusive federal cause of action for all claims "arising out of" the terrorist hijackings and air crashes of September 11, 2001, and vested exclusive jurisdiction in the United States District Court for the Southern District of New York over all cases "resulting from or relating to" such events to encourage consistency in judgments. In the same statute, Congress created a compensation fund for victims pursuant to which claimants on the fund waive the right to bring a civil action for "damages sustained as a result of" the hijackings and air crashes. The questions presented are:

1. Whether the United States Court of Appeals for the Second Circuit has a duty or responsibility to resolve fundamental conflicts among panels of that court with respect to the construction of the statute on questions having an outcome determinative effect on the right of families of victims of that tragedy to seek and to obtain judicial relief against independent tortfeasors.

2. Whether the plain meaning of the waiver provision ("as a result of") is narrower than the jurisdictional grant ("resulting from or related to") so that claimants on the fund do not waive claims against independent tortfeasors whose acts were a separate and additional proximate cause of deaths "relating to" but not "resulting from" the terrorist acts.

3. Whether the court of appeals holding that the statutory provision by which claimants on the compensation fund waive the right to sue for "damages sustained" as a result of the terrorist acts is the "functional equivalent" of a release of "all debts, claims, demands, damages, actions, and causes of action" is contrary to and conflicts with decisions of the Court and the courts of appeals holding that the term "damages sustained" is limited to compensatory damages.

4. Whether the court of appeals should have certified an unresolved and possibly controlling question of state law to the New York Court of Appeals, especially where the federal statute created an exclusive federal cause of action with exclusive federal jurisdiction, but mandates that the substantive law of New York applies.

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Petition for Writ of Certiorari

Lucy Virgilio, the personal representative of Lawrence Virgilio, and the twelve other appellants below,[1] petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

Opinions Below

The July 15, 2005 Order of the court of appeals denying petitioners' petition for rehearing and rehearing *en banc* (1a) is unreported. The April 29, 2005 opinion of the court of appeals (2a) affirming the order and judgment of the United States District Court for the Southern District of New York is reported at 407 F.3d 105. The April 12, 2004 Final Judgment of the district court (24a) is unreported; the unreported March 10, 2004 Order of the district court (26a), upon which the final judgment is based, is available on Westlaw at 2004 WL 433789. The January 29, 2004 Memorandum and Order of the district court (31a) is reported at 307 F. Supp. 2d 504.

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[1] Geraldine Halderman, Personal Representative of Lt. David Halderman, Eileen Tallon, Personal Representative of Sean Patrick Tallon, Gergard J. Prior, Personal Representative of Kevin M. Prior, Catherine Regenhard, Personal Representative of Christian Regenhard, Maureen L. Dewan-Gilligan, Personal Representative of Gerard P. Dewan, James Boyle, Personal Representative of Michael Boyle, Edward Sweeney, Personal Representative of Brian Sweeney, Gerald Jean-Baptiste, Co-Personal Representative of Gerard Jean Baptiste, Jr., Alexander Santora, Personal Representative of Christopher Santora, Maureen Santora, Personal Representative of Christopher Santora, Raffaela Crisci, Personal Representative of John A. Crisci and Patricia DeAngelis, Personal Representative of Thomas P. DeAngelis. All parties in the court of appeals are listed in the caption of this Petition.